APPENDIX A

United States Court of Appeals for the Second Circuit

No. 513—September Term, 1966

Argued June 13, 1967—Decided July 28, 1967

Docket No. 31272

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6 DEFENDANT-APPELLEE

Before HAYS and FEINBERG, Circuit Judges; DIMOCK, District Judge*

Appeals by both plaintiff and defendant from a judgment of the United States District Court for the Southern District of New York (a) which was entered upon a decision of Inzer B. Wyatt, *Judge,* (1) holding that certain union practices in connection with an election for union office could not be used as grounds for voiding the election under § 402(c) of the Labor Management Reporting and Disclosure Act of

*Of the Southern District of New York, sitting by designation.

1959, 29 U.S.C. § 482(c), because the action of the plaintiff Secretary of Labor was not based upon the complaint of a union member as required by § 402(a), 29 U.S.C. § 482(a), and (2) holding that, though a certain by-law of the defendant union limiting candidacy for union office violated § 401(e) of the Act, 29 U.S.C. § 481(e), an election in which the by-law was applied could not be declared void under the provisions of § 402(c) because plaintiff failed to show that the violation of Section 401(e) "may have affected the outcome" of the election, and (b) which enjoined (3) the application of the questioned by-law to future elections.

Affirmed as to (1); reversed as to (2) and (3).

ROBERT E. KUSHNER, Assistant United States Attorney (Robert M. Morganthau, United States Attorney for the Southern District of New York, and Martin P. Solomon, Assistant United States Attorney, on the brief), *for Appellant,*

JEROME B. LURIE, New York, New York (Cohn & Glickstein and Leonard Leibowitz, on the brief), *for Appellee.*

HAYS, *Circuit Judge:* Both plaintiff Secretary of Labor and defendant union appeal from a judgment of the United States District Court for the Southern District of New York in a case involving an election of officials of the defendant union. The district court held that a certain by-law of the union limiting candidacy for union office was violative of Section 401(e) of the Labor Management Reporting and Disclosure

Act of 1959, 29 U.S.C. § 481(e),[1] but declined to set aside, under the provisions of Section 402(c) of the Act, the election in which the by-law was applied because the Secretary failed to show that application of the questioned by-law "may have affected the outcome" of the election. However the district court enjoined the application of the by-law to future elections. During the course of the hearing on the Secretary's application, the district court rejected certain evidence proferred by the Secretary with respect to other violations of Section 401 which the Secretary

[1] "(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter."

alleged that the union had committed in the course of the election, on the ground that the Secretary's action was not supported by any complaint from a union member with respect to these alleged violations. (See § 402(a), 29 U.S.C. § 482(a)).[2]

Plaintiff attacks

(1) the refusal to set aside the election, and

(2) the rejection of evidence as to the additional violations.

Defendant attacks

(1) the holding that the union's by-laws violated Section 401(e), and

(2) the issuance of an injunction against future violations.

We hold that the lower court was correct in its ruling with respect to the additional alleged violations, but reverse the decision that the by-law was violative of Section 401(e). For the reason last stated and also for the reason that the court had no power to enjoin future violations, we set aside the injunction which the district court ordered.

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[2] "(a) A member of a labor organization (1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide."

I

We turn first to the district court's determination that the questioned by-law constituted a violation of the statute.

The by-law provides:

> "In order to be eligible for nomination as an officer, a candidate must possess the following qualifications: (1) He must be a member of the Union in continuous good standing for a period of two years immediately preceding his nomination; (2) He must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one year on either the Executive Board, the Assembly, or the old Shop Delegates Council. In order to be eligible for nomination as a member of the Executive Board, as a delegate to the Assembly, or as a department delegate, a candidate must be a member of the Union in continuous good standing for a period of at least one year immediately preceding his nomination."

The aspect of the clause to which the Secretary takes exception is the requirement of previous service on the Executive Board, in the Assembly, or on the Shop Delegates Council.[3]

Section 401(e) provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to * * * reasonable qualifications uniformly imposed) * * *." 29 U.S.C. § 481(e).

[3] Since service on the Executive Board is confined to officers and members of the Assembly, the provision of the by-law for previous service on the Executive Board may be disregarded.

The issue which we must resolve is whether the eligibility restrictions of the union by-law are "reasonable qualifications."

In determining this question we do not regard the "clearly erroneous" rule as controlling, see *Donaldson Publishing Co.* v. *Bregman, Vocco & Conn, Inc.*, 375 F. 2d 639, 641 (2d Cir. 1967); *Baranow* v. *Gibralter Factors Corp.*, 366 F. 2d 584, 587–89 (2d Cir. 1966); *Mamiye Bros.* v. *Barber S.S. Lines, Inc.*, 360 F. 2d 774, 776–78 (2d Cir.), cert. denied, 385 U.S. 835 (1966), although even if it were, we are left with "the definite and firm conviction that a mistake has been committed." See *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 394–95 (1948).

In deciding the issue of reasonableness we must keep in mind the fact that the Act did not purport to take away from labor unions the governance of their own internal affairs and hand that governance over either to the courts or to the Secretary of Labor. The Act strictly limits official interference in the internal affairs of unions. See, *Calhoon* v. *Harvey*, 379 U.S. 134 (1964); *Gurton* v. *Arons*, 339 F. 2d 371 (2d Cir. 1964). The Act prescribes only certain basic minima and leaves the area not covered by these minimum prescriptions to the decisions of the unions themselves.

> "Congress intentionally created a narrow remedy under Title IV of the LMRDA so that interference with union elections and management would be kept at a minimum." *Wirtz* v. *Locals 410, 410A, 410B & 410C, Int'l Union of Operating Engineers*, 366 F. 2d 438, 442 (2d Cir. 1966).

The Supreme Court, in discussing Title IV, referred to "the general congressional policy to allow unions

great latitude in resolving their own internal controversies." *Calhoon* v. *Harvey*, supra, 379 U.S. at 140.

The legislative policy of leaving to the unions the maximum degree of self-government is emphasized at many points in the legislative history.

In Senate Report No. 1684, 85th Cong., 2d Sess. 12–15 (1958), for example, the following appears:

> "The committee gave careful study to various proposals providing for the conduct of union elections by the National Labor Relations Board upon the request of a small percentage of the members. The committee rejected this approach for two reasons.
>
> "One fundamental objection is that these proposals turn over to an arm of the State the responsibility for carrying on the internal governmental processes of voluntary associations without any showing that the union officers and members are incompetent or corrupt. Such a measure does not promote freedom or democracy. It reduces self-government. It denies the private responsibility and self-determination which lie at the heart of a voluntary association." Reprinted in United States Department of Labor, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, p. 702 (1964). [Cited hereafter as "Legislative History".]

In Senate Report No. 187, the Committee referred to the following "principles" as governing the proposed legislation:

> "1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. More-

over, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.

"2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence." S. Rep. No. 187, 86th Cong., 1st Sess. 7 (1959), reprinted in U.S. Code Congressional and Administrative News, 2323 (1959).

Turning to the application of these policies to the present case, we hold that it is not self-evident that basic minimum principles of union democracy require that every union entrust the administration of its affairs to untrained and inexperienced rank and file members. Local 6 has over 26,000 members. Its assets amount to more than $2,300,000. Its Welfare, Pension and Medical Funds have assets of over $30,000,000. The local has jurisdiction of hotel, motel and club employees throughout New York City and thus deals with hundreds of employers on behalf of employees having a number of differing skills as well as on behalf of semi-skilled and unskilled employees. It does not seem to us to be surprising that the union should hesitate to permit a cook or a waiter or a dishwasher without any training or experience in the management of union affairs to take on responsibility for the complex and difficult problems of administration of this union.

Membership in the union's Assembly, which under the union's by-law is the principal basis for eligibility for positions of greater responsibility, provides an opportunity for meeting with the officers and with other more experienced members for discussion and consideration of contract negotiations, enforcement of contract clauses, union finances and many other aspects of union administration. Members of the Assembly are also members of district councils and they participate there in the work of the various committees which deal with all aspects of union problems.

We do not believe that it is unreasonable for a union to condition candidacy for offices of greater responsibility upon a year of the kind of experience and training that a union member will acquire in a position such as that of membership in Local 6's Assembly.

The by-laws provide a procedure for their amendment. If the rank and file members of the union had felt at any time during the many years in which the eligibility restriction has been in effect that they were being unjustly barred from office they could have sought to amend the restrictive provision. The record shows no attempt to bring about such an amendment.

The Secretary of Labor makes much of the fact that only about 1,700 members of the union are eligible for election to the 31 elective offices. However, when this number is combined with the fact that all members in good standing for one year have the opportunity to become eligible for office by getting themselves elected to seats in the four hundred-odd member Assembly, the numbers, per se, do not seem to us to establish unreasonableness.

It is not the function of the Secretary to determine what prescribed qualifications for office will best serve the purposes of union democracy nor to dictate what policy unions should follow in limiting candidacy for union office. The union's own rules as to eligibility must prevail unless they impose unreasonable qualifications. We are persuaded that in the present case the Secretary has trespassed upon an area of union governance which is left by the statute to the union's decision. We do not believe that a proper reading of the statute in the light of its history can justify the Secretary's finding that the union has violated Section 401 by adopting the contested eligibility requirements.

Since we have determined that the by-law is a reasonable qualification, it is not necessary to decide whether this restriction on candidates "may have affected the outcome" of the election. § 402(c), 29 U.S.C. § 482(c). Accordingly, we do not deal with that issue.

II

The Secretary's complaint sought to set aside the election on three other grounds in addition to the restrictive by-law: that the union failed to give adequate notice of the composition of the election districts; that there was improper interference with the members' right to vote for and support candidates of their choice; and that certain offices were not filled by election.

On defendants' motion these additional grounds were stricken from the complaint by Judge McLean. Judge Wyatt at the trial refused the Secretary's offer of proof with respect to these additional allegations.

We uphold the rejection of the additional allegations on the ground relied on by Judge McLean in

the district court, namely, that no member of the union filed with the Secretary any complaint as to these items. Section 402 (a) and (b), 29 U.S.C. § 482 (a) and (b), provide that:

> "(a) A member of a labor organization—
> "(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body,
>
> * * * * * *
>
> may file a complaint with the Secretary * * * alleging the violation of any provision of section 481 of this title * * *.
>
> "(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall * * * bring a civil action * * * to set aside the invalid election * * *."

It thus appears from the language of the statute itself that the Secretary may proceed to vindicate only those violations with respect to which he has received complaints. The legislative history reveals that Congress intended that the Secretary should have the power to bring an action only after a complaining member has exhausted his union remedies. See, for example, remarks of Senator Kennedy, June 12, 1958, Legislative History, supra, at 1093; S. Rep. No. 1684, 85th Cong., 2d Sess. (1958), reprinted in Legislative History, supra, at 701.

The Secretary argues strongly for a general power to protect the public interest, but nothing in the statute or in its legislative background suggests the existence of any such general power. The Secretary's function is, in Senator Kennedy's words, to act as "the [complaining] union member's lawyer." See Legislative History, supra, at 1093.

A suit to declare a union election void "may only be brought after a union member has made a proper complaint to the Secretary," *Wirtz* v. *Local Unions 410, etc.*, supra, 366 F. 2d at 442; accord, *Wirtz* v. *Locals 9, 9–A, & 9–B, Int'l Union of Operating Engineers*, 366 F. 2d 911 (10th Cir. 1966), vacated as moot, 35 U.S.L. Week 3403 (U.S. May 15, 1967), —— U.S. —— (1967); see *Wirtz* v. *Local 191, Int'l Bhd. of Teamsters*, 321 F. 2d 445, 448 (2d Cir. 1963).

III

The trial judge, though he refused to void the election, enjoined the union from applying its restrictive by-law in future elections. The injunction must be set aside, not only because we hold the by-law not violative of Section 401(e), but also because, as the Secretary concedes, the court has no power under the Act to issue such an injunction.

W. Willard Wirtz, etc. v. *Hotel, Motel and Club Employees Union, Local 6*

I concur.

WF.

July 6, 1967.
I concur; with opinion of my own.

DIMOCK, *District Judge* (Concurring): I concur in the majority's holding in so far as it disapproves an injunction and its omission to disturb the district court's denial of the Secretary's application to set aside the election.

My concurrence in the elimination of the provision for the injunction is based upon the Secretary's concession of lack of power in the district court.

Though I concur also in the majority's omission to disturb the judgment in so far as it fails to set aside the election; I reach the result on different grounds.

The district court held that the qualifications upon candidacy were not reasonable within the terms of section 401(e) but that it could not make the necessary statutory finding that the violation of section 401 may have affected the outcome of the election. The district court, therefore, failed to set aside the election. My brethren hold that the district court erred in finding the qualification unreasonable and thus agree to affirm the judgment denying the setting aside of the election without reaching the question whether the qualifications upon candidacy may have affected its outcome.

I agree with the district court that the qualifications were unreasonable and thus will reach the question whether the district court was right in refusing to find that the violation of section 401 may have affected the outcome of the election, the statutory basis for setting the election aside.

Irrespective of the provisions of Rule 52(a) F.R.Civ.P. that findings of fact shall not be set aside unless clearly erroneous, I agree with the district court's findings (a) that the only way to attain office in the union was through membership in the Assembly, that the only candidates that won such election were those who ran on Row A, the administration ticket, and that the only way they could run on Row A was to be selected by the administration, and (b) that "dissidents could not have become eligible to be opposing candidates for office and effective opposition was thus sharply curtailed". When it comes to the question of the findings' inviolability as not "clearly erroneous", I can see no escape from the

effect of the rule. We are not here faced with findings of fact to be drawn from a set of cold documents. This is a case where the question before the district court was the practical effect of the rules of a union. It seems to me to be made for the "not clearly erroneous rule." The effect of the restrictions does not depend entirely on their letter. When Judge Wyatt found that dissidents could not have become opposing candidates for office he was expressing the distillation of oral testimony about what happened in a particular hotel or a particular caucus of waiters or kitchen helpers or chamber maids. It discourages thorough work by a judge of first instance for an appellate court lightly to reject a finding based on the feeling for a case that the trial judge can get by patient listening to evidence of what is behind the written documents.

I pass to the issue not reached by the majority: the correctness of Judge Wyatt's opinion and judgment in so far as it holds that it cannot be found that the violation of Section 401 with respect to qualifications of candidates affected the outcome of the election. I accept Judge Wyatt's excellent opinion and content myself with simply saying so since the subject does not seem to me to have sufficient precedential value to warrant repetition of what he has said. Though the majority hold the election good because the qualification was reasonable and I maintain that it was good because the qualification, though unreasonable, did not affect it, we reach the same result and I concur in that result.

While I thus agree with the majority that the district court was right in omitting to grant the Secretary's prayer to set aside the election and that the district court was wrong in awarding an injunction, I

disagree with the majority as to the form of our mandate.

The statement preceding the majority opinion recites that the appeals are from a judgment (a) which was entered upon a decision * * * (2) holding that, though a certain by-law of the defendant union limiting candidacy for union office violated section 401(e) of the Act, 29 U.S.C. § 481(e), an election in which the by-law was applied could not be declared void under the provisions of § 402(c) because plaintiff failed to show that the violation of section 401(e) "may have affected the outcome" of the election and (b) which enjoined (3) the application of the questioned by-law to future election. The statement ends with the expression "Affirmed as to (1); reversed as to (2) and (3)".

The statement thus properly draws a distinction between the decision and the judgment. As said by Judge Leibell in *Winkelman* v. *General Motors Corporation,* D.C.S.D.N.Y., 48 F. Supp. 490 (1942), at 494, "The Federal Rules of Civil Procedure make a clear distinction between the decision (the Findings of Fact and Conclusions of Law) and the judgment." As appears from Rule 52(a) F.R.Civ.P. "[T]he court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment * * *." The statement preceding the opinion in the instant case, purports, however, to affirm and reverse parts of the "decision" of the court below. Though the word appears again, this time in the opinion itself, appeal does not lie from a finding or conclusion as such. *Breeding Motor Freight Lines* v. *Reconstruction Finance Corpora-*

tion, 172 F. 2d 416, 425, 10 Cir. (1949).* That the word "decision" is not used here as a conversational equivalent of "judgment" appears from the fact that its use affects the result. If the appeal had been from the judgment, the judgment would have been reversed in only one respect instead of being reversed in the two respects in which the statement purports to reverse the decision. This arises from the fact that the majority of this court agree with the judgment of the court below that the Secretary's prayer for a setting aside of the election should be denied but disagree with the court below as to the decision giving the reason for denying the prayer. The district court said that the prayer should be denied because, though the candidacy restriction violated the law, it could not be said that it might have affected the election, while the majority says that the prayer should be denied because the candidacy restriction did not violate the law and, therefore, does not reach the question of effect on the election. The statement preceding the opinion, which would have the effect of affirming the lower court's judgment refusing to grant the prayer, purports, however, to reverse the lower court's decision as to its reason.

The result of the majority holdings and of my foregoing concurring opinion should be expressed in the same direction:

The judgment is modified so as to provide simply for dismissal of the complaint and, as so modified, affirmed.

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*The word "decision", as used in Sections 1291 and 1292 of Title 28 of the United States Code defining jurisdiction of the Court of Appeals, refers to the judgment or other final sentence of the court below. Ex Parte Tiffany, 252 U.S. 32, (1919); In re Forstner Chain Corporation, 177 F. 2d 572, 1 Cir. (1949).

APPENDIX B

United States Court of Appeals for the Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-eighth day of July one thousand nine hundred and [seven].

Present: Hon. PAUL R. HAYS, Hon. WILFRED FEINBERG, Circuit Judges; Hon. EDWARD J. DIMOCK, District Judge.

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT-APPELLEE

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said Dis-

trict Court be and it hereby is modified in accordance with the opinion of this court, and as so modified said judgment be and it hereby is affirmed.

A. DANIEL FUSARO,
Clerk.

By VINCENT A. CARLIN,
Chief Deputy Clerk.

A true copy.

A. DANIEL FUSARO,
Clerk.

Judgment entered September 22, 1967.

JOHN J. OLEAR, Jr.
Clerk.

APPENDIX C

United States Court of Appeals for the Second Circuit

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT-APPELLEE

Petition for Rehearing

ROBERT M. MORGANTHAU, United States Attorney for the Southern District of New York, New York, N.Y., for plaintiff-appellant.

Petition denied.

PAUL R. HAYS,
WILFRED FEINBERG,
U.S.C.J.J.

I dissent.

EDWARD J. DIMOCK,
U.S.D.J.

SEPTEMBER 26, 1967.

United States Court of Appeals for the Second Circuit

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF-APPELLANT

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT-APPELLEE

Petition for Rehearing In Banc

ROBERT M. MORGANTHAU, United States Attorney for the Southern District of New York, New York, N.Y., for plaintiff-appellant.

No active circuit judge having requested that a vote be taken on the suggestion that the case be reheard in banc, the same stands denied.

Chief Judge.

SEPTEMBER 20, 1967.

APPENDIX D

United States District Court for the Southern District of New York

66 Civ. 626

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT

OPINION

MCLEAN, *D.J.*: This is an action by the Secretary of Labor, pursuant to 29 U.S.C. § 482(b) for a judgment declaring an election of officers of defendant union held on May 19, 1965 to be null and void. Defendant moves (1) to dismiss the action for failure to join the union officers as defendants, and (2) in the alternative, to strike paragraphs 8(c), 8(d) and 9 of the complaint.

The ground of the first motion is that the officers elected at the election in question are indispensable parties, because their rights will be affected by the determination made in this action. It seems clear that the statute does not contemplate their joinder, for it provides that the action shall be brought "against the labor organization as an entity." 29 U.S.C. § 482(b). But defendant says that the statute deprives the union

officers of due process of law and is therefore unconstitutional.

This same contention, phrased in very much the same way, has recently been rejected in *Wirtz* v. *Teamsters Union Local No. 73,* 53 L.C. ¶ 11;288 (N.D. Ohio, E.D., May 11, 1966). The court's opinion refers to two unreported decisions to the same effect, one of which is a decision by Judge Anderson in the District Court in *Wirtz* v. *Local 191, International Brotherhood of Teamsters,* Civ. No. 9776 (D. Conn. 1964), denying a motion by union officers for leave to intervene in an action brought by the Secretary under this statute.

The subject is thoroughly treated in *Wirtz* v. *Teamsters Union Local No. 73, supra,* and I see no need to repeat here what was said there. The court's conclusion seems to me to be correct. No case to the contrary has been found. I will follow the *Local No. 73* decision. Defendant's motion to dismiss for failure to join indispensable parties is therefore denied.

Defendant's alternative motion raises a different question. The paragraphs of the complaint which defendant seeks to strike relate to alleged violations of law about which apparently no union member complained, either to the union or to the Secretary. The moving affidavit establishes, without contradiction from plaintiff, that the sole ground upon which any union member protested to the union about the election related to Article IV, Section 7A(2) of the union's bylaws, which provides that to be eligible for nomination as an officer, a candidate must be either a present or former member of the Executive Board or the Assembly, or a former member of the Shop Delegates' Council, now defunct. The protesting members considered this bylaw too restrictive. Concededly

they exhausted their remedies within the union, without success, as far as this objection was concerned. Although the complaint in the present action does not specify the objection contained in the complaint of the union members to the Secretary, plaintiff does not contend that it was anything other than this same objection to the bylaw provision. In his complaint in this action, however, the Secretary attacks the election, not only upon this ground, but also upon additional grounds which apparently occurred to him in the course of his investigation of the union members' complaint, i.e., that the union failed to give adequate and timely notice of the composition of its election districts, that the members' right to support and vote for the candidate of their choice was "subject to improper interference" and that certain offices of the union have been filled "in a manner other than by election." This last allegation, it would seem, does not even relate to the election of May 19, 1965 which the Secretary seeks to overturn. Rather, it appears to be a complaint that there was no election at all, as far as certain offices are concerned.

29 U.S.C. § 482(a) provides that:

> "(a) A member of a labor organization—
> "(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body * * *
>
> may file a complaint with the Secretary * * * alleging the violation of any provision of section 481 of this title * * *."

Subsection (b) provides:

> "The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall * * * bring

> a civil action * * * to set aside the invalid election * * * ."

Pertinent legislative history of this statute is reviewed in *Wirtz* v. *Local Union No. 125, International Hod Carriers', etc.,* 231 F. Supp. 590 (N.D. Ohio, E.D. 1964). It indicates that in enacting this section, Congress had in mind the desirability of preserving independent self-government of the union as far as was compatible with the public interest in free and democratic union elections. It intended that the union should have an opportunity to regulate its own affairs before the Secretary could ask a court to regulate its affairs for it. As the court said in *Wirtz* v. *Local Union 169, International Hod Carriers', etc.,* 246 F. Supp. 741, 752 (D. Nev. 1965):

> "The act should be construed to mean that the Secretary has, on complaint of a union member, the right to investigate all aspects of the contested election and to base a complaint to the Court on every issue which the defendant union had a fair opportunity to consider and resolve in connection with any member's appeal to the General Executive Board of the union."

No doubt it would be unreasonable, as the court in *Wirtz* v. *Local 169, supra,* also recognized, to insist that the Secretary's action should be limited to the particular ground asserted by the particular union member who complained to him. That member might be too inarticulate to express the complaints of his fellows. He might not even know of all of them. But it is not too strict to limit the Secretary's attack upon an election to those grounds about which some member, not necessarily the one who eventually complained

to the Secretary, has previously complained to the union. If the Secretary is free to attack an election because of matters never brought to the attention of the union, and which the union never had an opportunity to correct, as the Secretary seeks to do here, the congressional intent clearly manifest in this statute is frustrated.

The cases so hold.

Wirtz v. *Local Union 125, supra.*
Wirtz v. *Local Union 169, supra.*
Wirtz v. *Local Unions No. 406, 406–A, 406–B, I.U.O.E.*, 53 L.C. ¶ 11,297 (E.D. La. May 19, 1966).
Wirtz v. *Local Unions, No. 9, 9–A and 9–B, I.U.O.E.*, 51 L.C. ¶ 19,579 (D. Colo. 1965).
See *Wirtz* v. *Local 191, International Brotherhood of Teamsters, etc.*, 321 F. 2d 445, 448 (2d Cir. 1963).

It follows that paragraphs 8(c), 8(d) and 9 have no proper place in this complaint. Defendant's motion to strike them is granted.

So ordered.

EDWARD C. McLEAN,
U.S.D.J.

DATED: JULY 15, 1966

APPENDIX E

United States District Court for the Southern District of New York

66 Civ. 626

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT

WYATT, *District Judge:* The principal question here is whether prior service as a Union officer, on a Union Board, or in the Union Assembly, is a "reasonable" qualification, under the Landrum-Griffin Act, for candidacy for office in the defendant Union.

Section 401(e) of the Act (29 U.S.C. § 481(e)), which may also be cited as the Labor-Management Reporting and Disclosure Act of 1959, provides that in any union election required by the Act "every member in good standing shall be eligible to be a candidate and to hold office (subject to * * * reasonable qualifications uniformly imposed)".

This action, tried to the Court without a jury, was brought by the Secretary of Labor to declare void, etc. an election of officers of defendant Union ("the Union" or "Local 6") held on May 19, 1965. The action is authorized by Section 402 of the Act (29 U.S.C. § 482).

The Secretary charges that the Union violated Section 401(e) of the Act in that its by-laws made eligible for nomination as officers only those members who were then members of the Assembly or of the Executive Board or who had served in the past as members of the Assembly or of the Executive Board or of the former Shop Delegates Council. The Secretary contends that this qualification is not "reasonable" under Section 401(e) of the Act.

It is undisputed that the Union is a "labor organization" subject to Section 401 of the Act, in that it is engaged in an industry affecting commerce (Act § 3(i), 29 U.S.C. § 402(i)). It is also undisputed that members of the Union, having invoked available internal union remedies without final decision, etc., properly filed a complaint with the Secretary and that the Secretary investigated, found probable cause to believe that a violation had occurred, etc., and timely brought this action.

The Court has jurisdiction under Section 402 of the Act.

If the Union did violate the Act as charged and if this violation "may have affected the outcome" of the election, the Court must then declare the election void and direct a new election (29 U.S.C. § 482(c)).

The prior office holding qualification of the by-laws is found not to have been "reasonable" and its enforcement in the 1965 election is found to have been a violation of the Act.

It is not found that this violation "may have affected the outcome" of the election.

The 1965 election of officers cannot be declared void, therefore, but the Secretary may properly be given relief in respect of future such elections.

I

A. DESCRIPTION OF THE UNION; ELECTIONS BEFORE THAT IN 1965

The Union began about 1938 with a successful effort to organize workers in the hotels and clubs in New York City; it was in an organizational period until about 1946.

The Union has been at all times affiliated with the Hotel and Restaurant Employees and Bartenders International Union, A.F.L.–C.I.O. (the "Hotel, etc. International"). It is the largest of the locals affiliated with the Hotel, etc. International.

From the early days of the Union to 1951, its "highest legislative body" was the "Shop Delegates Council". This was made up (a) of delegates elected from each department of each hotel and club, (b) of members of "department boards" and (c) of the general officers. In order to be eligible as a candidate for delegate to the Shop Delegates Council, a person must have been employed at the hotel or club for at least six months and must have been a member of the Union for at least one year.

After a crisis in the affairs of the Union, an election of delegates to a convention was held in May 1951 and an election of officers was held in June 1951. There were rival slates in both elections. Voting machines were used, as has been the practice in all later elections of the Union. The candidates for delegates of the United Union Organization, running on Row A (the top row) were elected by a wide margin. The candidates for officers of the Administration Ticket,

running on Row A, were elected by a vote of about 7,300 to about 3,300 for the nearest opposition slate.

It has been the practice in all Local 6 elections that the administration slate is given the Row A position on the voting machines.

New by-laws were adopted at a special convention held in September 1951, and from that time down through the 1965 election in suit, the structure of the Union has been substantially the same.

By force of the 1951 by-laws, the Shop Delegates Council was abolished and the "Assembly" was set up as the "highest legislative body" in its place. The method of electing delegates to the Assembly was changed from that employed for the Shop Delegates Council. Doubtless these changes were to reduce the governing body to a less numerous and thus to a more efficient group.

The Union is organized by departments and by districts.

The departments are made up of members in each separate craft or broad category of work, except that all club employees are in the club department regardless of the work they do. There are five departments of hotel employees: Banquet, Bar, Dining Room, Housekeeping and Kitchen.

The districts for hotel employees are geographical areas determined by the most effective and convenient grouping of hotels for administrative purposes. There are six numbered districts for hotel employees. All club employees are in a single district.

The basic element in the Union is the unit or shop in the hotel or club where the members of a particular

craft work. Each dining room or kitchen, for example, is a separate unit. Each unit elects a "department delegate" who cooperates with officers of the Union in the handling of grievances and other matters affecting members in his unit. The term "department delegate" is simply another name for shop steward. The department delegates in a district, together with the district officers, make up the District Council.

The organizational novelty of Local 6 is that, while each craft has its own unique traditions, interests and problems, Local 6 includes several different crafts and negotiates with employers for them all. By means of by-laws and otherwise, however, care is taken that each craft (department) in Local 6 has proportional representation in the Assembly and in other Union activities. Care is similarly taken that the employees in any one hotel do not acquire a dominant influence.

Each district has a vice-president and from one to four business agents. These are paid and full time officers and are elected by the members in the district (before March 1959 voting had been by departments).

There are four general officers of the Union: President, Secretary-Treasurer, General Organizer, and Recording Secretary. The general officers are paid, full time officers and are elected by all members in all districts.

The delegates to the Assembly are elected by districts but within a district delegates may be elected from "election districts" established by the Assembly (before March 1959 voting had been by departments). In general, one delegate is elected for each 75 members in the district; there are by-law provisions to see

that delegates are elected from the various departments in proportion to department membership and not too many from any one hotel. The Assembly meets at least quarterly and each year must meet for a full day. The general officers, the vice-presidents, and the business agents are automatically members of the Assembly.

There is an Executive Board (which meets monthly) made up of the principal officers and of members elected by the Assembly on the basis of one Executive Board member from each department for each 500 members of that department.

The term of office of officers and members of the Assembly was two years until a revision of the by-laws in March 1959; since March 1959, the term has been three years.

From September 1951 until at least October 15, 1963, the by-laws of the Union required that a candidate for office must have been a member in good standing for two years and in addition "must be a member of either the Assembly or the Executive Board, or else, at some time in the past, have served at least one term on either the Executive Board, the Assembly, or the old Shop Delegates Council".

It is suggested for the Union that at a meeting of the Assembly on October 15, 1963, the quoted by-law provision was amended so as to change the word "term" to the word "year". The evidence is not convincing that such amendment was in fact adopted. The difference between "term" and "year" is not significant for this decision, however, and it will be as-

sumed that before the 1965 election the word "term" had been changed to "year".

While this prior office qualification had to be satisfied by candidates for Union office at an *election,* it was not applicable to *appointed* officers. If an office becomes vacant, a successor can be appointed by the general officers subject to approval by the Executive Board and the Assembly. Moreover, the Assembly may appoint business agents (who are paid officers) additional to those elected. Several members who had never held office in the Union were in fact appointed as business agents.

Candidates for delegate to the Assembly must have been members in good standing in the Union for one year before nomination.

The 1951 by-laws provided that an election of officers should take place in May 1954 and every two years thereafter.

An election of officers, members of the Executive Board and members of Department Committees took place on May 19, 1954. The incumbent administration ran a full slate for 4 general offices, 23 department offices, 59 members of the Executive Board, and 70 members of the Department Committees. There were no opposition nominees for general offices and but 10 opopsition nominees for 9 of the 23 department offices. There were 19 opposition nominees for 16 of the 59 places as members of the Executive Board. There were 11 opposition nominees for 11 of the 70 places as members of Department Committees. The administration slate won all contests by substantial margins except in one department where the margin was smaller. The

vote in the several contests for department offices was as follows:

Administration nominees		*Opposition nominees*
(elected)	1981	136
*	*	*
(elected)	2315	712
*	*	*
(elected)	2276	674
(elected)	2270	691
(elected)	2238	693
(elected)	2216	672
		189
*	*	*
(elected)	4541	53
(elected)	4565	
(elected)	4523	
(elected)	4534	
*	*	*
(elected)	666	567
*	*	*
(elected)	684	522

There was an election of officers, members of the Executive Board, and members of Department Committees, called to be held on May 16, 1956. The administration nominated a full slate for 4 general offices, 23 department offices, 59 members of the Executive Board, and 60 members of the Department Committees. There were no opposition nominees for any offices. In one department, there were 4 opposition nominees for 3 places as members of the Executive Board and 7 opposition nominees for 7 of the 10 places as members of the Department Committee. There was

no voting in 1956 except in the one department where there were some opposition nominees for the Executive Board and the Department Committee. In that department, the full administration slate for the department appeared on the voting machine even though there was no contest for any of the offices. The administration slate won by a substantial margin. The administration nominees in all departments were declared elected.

For some reason not appearing in the record, there was no election of officers in 1958, the end of the two year term. Presumably the incumbent officers continued to act.

At some time before March 1959, the by-laws were amended to provide that there should be an election of officers and members of the Assembly in May 1959 and every third year thereafter, and that the terms of office of the officers and members of Assembly should be three years. It was also provided that voting should be by districts rather than by departments. There were four geographical districts, a club district and two departments treated as districts.

There was an election on May 21, 1959 of officers and of delegates to the Assembly, all for a three year term. The administration nominated a full slate for 4 general officers, 21 district officers, and 405 delegates to the Assembly. There were no opposition nominees for general offices and but 4 opposition nominees for 3 of the 21 district offices. There were 15 opposition nominees for 15 of the 408 places as delegates to the Assembly. The administration won all contests by sub-

stantial margins. The vote in the several contests for district offices was as follows:

Administration nominees		*Opposition nominees*
(elected)	1865	116
(elected)	1862	
*	* * *	* * *
(elected)	778	205
*	* * *	* * *
(elected)	757	209
		47

There was an election on May 23, 1962 of officers and of delegates to the Assembly, all for a three year term. The administration nominated a full slate for 4 general offices, 25 district offices, and 399 delegates to the Assembly. There were no opposition nominees for any of the offices. There were 6 opposition nominees for 6 of the 399 places as delegates to the Assembly. The entire administration slate was elected; the opposition nominees for the Assembly were defeated by wide margins.

The by-laws were further amended on October 15, 1963. As a result, the Union was divided into geographical districts and the Club District; each district was to have its own offices: a vice-president and one or more business agents; no officers were to be elected by any department. It was provided that the next election should be in May 1965.

The membership in the Union since 1951 has remained at about the same number. The exact figures,

with number of votes cast in the elections (including the 1965 election in suit), are as follows:

Election year	Membership	Votes cast
1951	26,630	12,705
1953	25,678	14,618
1959	26,974	11,214
1962	26,340	7,131
1965	27,354	11,254

While the total number of members in the Union is thus a static figure, there seems to be a high turnover of individual members. This is shown by the fact that from August 1, 1963 to July 31, 1965 there were 5,737 new members joining the Union, or an average of about 240 new members each month. Applying this figure to the 36 months between the May 1962 election and the May 1965 election, it would appear that 8,640 new members joined the Union in that period, or roughly a third of the membership. It is indicated that there is a turnover of upwards of 10% of the Union membership each year.

The exact number of Union members who were eligible to run for Union office in May 1965 cannot be determined, principally because there are few records of the old Shop Delegates Council which, as already noted, was abolished in 1951. It was impossible for the Union to apply its eligibility rule with accuracy because there was no way to verify whether a particular candidate had been a member of the Shop Delegates Council. There is some evidence that if an identification card or some similar certificate in respect of the Shop Delegates Council was produced by a candidate, this was accepted to establish eligibility. The Union produced at trial a list of names taken from its records which showed that at least 1,725 members were eligible to run for office in the May 1965 elec-

tion. Of these 1,725 members, 1,182 were eligible because they had been members of the Shop Delegates Council before 1951; the remaining 543 were eligible because they had been members of the Assembly at some time since 1951.

In practice it was not possible to be elected to the Assembly except with the blessing of the Administration Party conferred by selection to run for the Assembly on Row A. This was doubtless in large part because there was never a full slate of opposing candidates for the Assembly. The candidates to run on Row A for the Assembly were selected by the incumbent group of officers and were put in nomination after caucuses of invited members, attended by officers. It was only natural that candidates selected to run on Row A for the Assembly would be supporters of the administration. All candidates on Row A were pledged to support each other. Dissidents could not be elected to the Assembly.

B. THE ELECTION OF MAY 19, 1965

An election was called to be held on May 19, 1965. At this election, there were to be elected from the Union as a whole four general officers and 10 delegates to the Convention of the International. In the 7 districts, there were to be elected a total of 27 district officers (7 vice-presidents and 20 business agents) and 372 delegates to the Assembly.

In anticipation of the 1965 election, an opposition group was organized calling itself the "Membership Party".

The Assembly met on April 6 for nominations for the 4 general offices and for 10 delegates to the International Convention. Nominations were permitted to be made by any member. Two full rival slates were nominated for these 14 positions, one being the ad-

ministration slate (made up principally of those who were already serving as paid officers) and the other that of the opposition Membership Party.

There were meetings on April 13 in each district for nominations for the 27 district offices and for the 372 delegates to the Assembly. A full slate was nominated for the administration to run for the 27 district offices and for the 372 places for delegates to the Assembly. In all districts except the Club District, there were opposition candidates nominated for vice-president; in five districts, there were opposition candidates nominated for business agent, but not for all the business agent positions to be elected. For the 27 district offices to be elected, there were 14 opposition nominees for 16 offices (two of the Membership Party nominees were each nominated for two separate offices). Of the 14 opposition nominees for district office, one was an independent not affiliated with the Membership Party. For the 372 Assembly delegates to be elected, there were 5 opposition nominees, 2 of the Membership Party and 3 running as independents.

Elections in the Union are conducted under rules and regulations established by an "Election and Objections Committee" designated by the Assembly. The Committee also rules on the eligibility of candidates nominated to run for office or for delegate to the Assembly.

The Committee ruled ineligible two of the Membership Party nominees for the four general offices. The nominee for Secretary-Treasurer was ruled ineligible because he had not held prior office. The nominee for Recording Secretary was ruled ineligible because he had not been a member of the Union for the required period of two years.

The Committee ruled ineligible two of the Membership Party nominees for delegate to the International

Convention, apparently because they had not been members of the Hotel, etc. International in continuous good standing during the period since April 18, 1964. Delegates to such Convention must have been members of the Hotel, etc. International for at least two years and of the local union at least sixty days before the Convention. The Convention for which delegates were to be elected by Local 6 on May 19, 1965 was to meet on April 18, 1966.

The Committee ruled ineligible, because they had not held prior office, five Membership Party nominees for vice-president of districts (one was a nominee for vice-president in two districts) and three Membership Party nominees for business agent of districts (one was also a nominee for vice-president). Eight persons were thus ruled ineligible for district office because they had not held prior office.

The Committee ruled ineligible, because they lacked the required period of membership, three Membership Party nominees, one for vice-president and two for business agent.

No nominees for the Assembly, whether of the Membership Party or independent, were ruled ineligible.

There is no suggestion that the Committee incorrectly applied the qualification provisions of the by-laws to the facts as they existed in respect of the opposition nominees.

The 1965 election, in accord with settled practice, was conducted with voting machines. The nominees for the four general offices and for the ten delegates to the International Convention appeared on the machines in all the districts. The full administration slate was on Row A. The two nominees of the Membership Party for general office (President and General Organizer) and its eight nominees for the ten dele-

gates to the International Convention were on Row B, just below Row A.

There were thus two blank spaces on Row B in the four columns for general offices (no Membership Party nominees for Secretary-Treasurer and Recording Secretary) and two blank spaces in the ten columns for delegates to the International Convention. Had the prior office by-law qualification not been in force, there would have been a Membership Party nominee for Secretary-Treasurer on Row B in all districts.

In each district, the nominees for district offices and for the Assembly appeared on the machines in an extension to the right of the rows in which were the nominees for general offices; then in a further extension of the row to the right appeared the nominees for delegates to the International Convention. The full administration slate for the district was on Row A.

According to normal voting machine procedure, it was possible to pull down one lever to vote for all the nominees of a particular slate on one row.

In four districts (1, 3, 5, 6), there were no opposition nominees on the voting machines for the 14 district offices or for the 195 Assembly delegates to be elected in those districts. Had the prior office by-law qualification not been in force, there would have been 6 Membership Party nominees on the voting machines for the 14 district offices to be elected in those districts.

In the Club District, there was one Membership Party nominee on the voting machines for Assembly delegate, there having been 24 delegates to be elected in the election district of that nominee. This Membership Party nominee appeared on Row B). Had the prior office by-law qualification not been in force, the situation in that district would have been the same.

In one district (2), there was one Membership Party nominee for one of the three business agents to be elected. This nominee appeared on Row B. There was also an independent opposition nominee for one of the three business agents to be elected and two independent nominees for two of the 29 Assembly delegates to be elected in their election district. The independent nominees appeared on a third row designated "Independent" and just below Row B. Had the prior office by-law qualification not been in force, there would have been two Membership Party nominees for two of the four district offices to be elected.

In the remaining district (4), there was one Membership Party nominee for one of the three business agents to be elected and one Membership Party nominee for one of 28 Assembly delegates to be elected. These nominees appeared on Row B. There was one independent opposition nominee for one of the 28 Assembly delegates. The independent nominee appeared on a third row designated "Independent" and just below Row B. Had the prior office by-law qualification not been in force, there would have been two Membership Party nominees for 2 of the 4 district offices to be elected (two Membership Party nominees were each nominated for two different offices; it is assumed that they could not have properly run for both, even if eligible for either).

In the May 19, 1965 election, 11,254 members cast votes (not all voted for every position to be filled) out of 27,354 members eligible to vote.

So far as appears from this record, the voting was fairly and honestly conducted and the votes were accurately counted.

The result of the voting was the election of all Row A administration slate candidates.

The vote in the two contests for general offices was as follows:

Administration nominees		*Membership Party nominees*
(elected)	9,314	1,347
(elected)	9,216	1,299

The lowest vote cast for an administration nominee for delegate to the International Convention was 8,615; the highest vote cast for a Membership Party nominee was 1,154.

Two nominees for Union office of the Membership Party who were ruled ineligible because they had not held prior office were ruled eligible to run for delegate to the International Convention and did appear as candidates for delegate on the voting machines in all districts. They received 1,151 and 1,145 votes, respectively; as noted above, the lowest vote for an administration nominee was 8,615.

The vote in the contests for business agents, where three were to be elected in each of two districts, was as follows:

Administration Nominees	Membership Party Nominees	Independent Nominees
(elected) 1,188	333	70
(elected) 1,206		
(elected) 1,184		
(elected) 1,924	262	
(elected) 1,942		
(elected) 1,903		

In the contest for one place as Assembly delegate in the Club District, the lowest vote cast for an administration nominee for Assembly delegate was 571; the vote for the Membership Party nominee was 58.

In District 2, the lowest vote for the 29 administration nominees for Assembly delegate was 568; the

two independent nominees received 40 and 41 votes, respectively.

In District 4, the lowest vote for the 28 administration nominees for Assembly delegate was 540; the Membership Party nominee received 71 votes and the independent nominee 14.

C. EPILOGUE

The officers and members of the Assembly elected on May 19, 1965 have been acting as such since that date and have already served almost two years of their three year term.

It appears that during the pendency of this action and in December 1966, the by-laws of the Union were substantially changed in respect of the prior office qualification. As then amended, the qualification to run for Union office is that the candidate "must have served as a member of either the Assembly or the Executive Board or he must have been a department delegate, or in the alternative, he must have been a member of the Union for five (5) years".

Evidence was introduced for the Secretary to show to what extent other unions in the country required prior office holding to be eligible for union office. This kind of evidence has been admitted and considered in determining whether particular qualifications were "reasonable" under Section 401(e) of the Act. *Wirtz* v. *Local Unions No. 406, etc.*, 254 F. Supp. 962, 965 (E.D. La. 1966); *Wirtz* v. *Local 30, etc.*, 242 F. Supp. 631 (S.D.N.Y. 1965), remanded on other grounds, 366 F. 2d 438 (2d Cir. 1966); *Goldberg* v. *Amarillo General Drivers, etc.*, 214 F. Supp. 74, 77–8 (N.D. Tex. 1963).

There were 72 major national and international unions, that is, unions having more than 40,000 mem-

bers. Of these, only one required prior office holding as a qualification for candidacy for local union office. The Hotel, etc. International, with which Local 6 is affiliated, is not that one and has no such requirement.

There were 23 national and international unions which have between 20,000 and 40,000 members. None of these required prior office holding as a qualification for candidacy for national or international union office. The Secretary argues that this is appropriate for consideration because the membership of Local 6 is about mid-way between 20,000 and 40,000; for Local 6, it is pointed out that Local 6 is not a national union and that the national union with which it is affiliated has a membership of 444,000.

There were 485 local unions affiliated with the Hotel, etc. International. The average number of members of the locals was 899. There were 125 locals having more than 900 members, including, of course, Local 6. Of these 125 locals, 93 (or about 75%) had no requirement of prior office holding as a qualification for candidacy for local union office.

There were 66 local unions of all kinds which had total receipts in 1964 of more than one million dollars; Local 6 in that year had receipts of more than two million dollars. Of these 66 local unions, only seven required prior office holding as a qualification for candidacy for local union office. Local 6 was one of the seven, and the other six were all affiliated with the one national or international union which requires prior office holding as a qualification for candidacy for local union office.

III

The prior office eligibility requirement of Local 6 was not "reasonable" within the meaning of Section 401(e) but was contrary to the basic purposes of the

Act. It has been noted that the requirement dates from at least 1951; the Act did not become effective until 1959.

One of the chief aims of the Act was to secure "free and democratic union elections" just as in elections in the community at large. S. Rep. No. 187, 86th Cong., 1st Sess., 20, also 5–6 (1959). Congress therefore provided specifically and affirmatively that "every member in good standing shall be eligible to be a candidate" and the only relevant exception was for "reasonable qualifications". The burden of showing that a qualification is "reasonable" is a very heavy one.

Any requirement of prior office holding to be eligible for union office would be unreasonable. The only justification for such a requirement is, as here urged for Local 6, that the magnitude and complexity of union problems requires a certain minimum of experience in union affairs. But this is on the premise that the membership at large cannot be trusted properly to evaluate union experience in casting election ballots. The philosophy of a free democratic society, expressed in the Act, does not tolerate such a premise. The philosophy adopted by Congress in the Act is well expressed in a motto used by a newspaper and said to have been inspired by, or translated from Dante (Divine Comedy, Purgatory, canto XXII, lines 67–69): "Give light and the people will find their own way".

The members of a union must have a free choice to give such weight to experience, inexperience, or to other factors as they see fit. Such is the choice when voting for President and Vice-President of the United States. Candidates for these high offices are not required to have any particular prior experience. The voters weigh the prior experience of the candidates, or lack thereof, in making their choice.

The evidence shows that over 90% of large local unions of all kinds have no prior office requirement and that about 75% of the larger locals which are affiliated, like Local 6, with the Hotel, etc. International have no such requirement.

In any event, the particular by-law requirement of Local 6 was not in its context "reasonable".

Accepting the Union figures, the effect in 1965 of the prior office qualification was to make ineligible for office about 93% of the membership. While 1725 members (or about 7% of the total) were eligible, 1182 of this number (or nearly 70% of the eligibles) satisfied the prior office requirement by service on the Shop Delegates Council, a body which was abolished in 1951, fourteen years before the election. A former member of the Shop Delegates Council who had not held office for fourteen years would thus be eligible whereas an active department delegate for ten years would not be eligible.

Since 1951 the only way new members could become eligible for office was to win election to the Assembly. But in this period the only candidates which won such election were those who ran on Row A, the administration ticket. The only way to run on Row A was to be selected by the administration. Thus, dissidents could not become eligible to be opposing candidates for office and effective opposition was thus sharply curtailed.

Finally, the need for prior office experience is not shown. In this connection, it is significant that an officer may be *appointed* who has no prior office experience and who thus does not satisfy the eligibility requirement for election to that office. But once such an officer is appointed, he automatically becomes a member of the Assembly and immediately becomes eligible to run thereafter for any union office. This

enables the incumbent group to qualify members for elective office by a procedure not available to dissidents.

Any requirement of prior office holding to run for union office is bound to favor the incumbents to the prejudice of wholly free and open elections which it was the purpose of Congress to encourage.

IV

It cannot be found that the violation of section 401(e) "may have affected the outcome" of the 1965 election.

Decision of this issue is governed by the teaching of *Wirtz* v. *Local Unions 410, etc.*, 366 F. 2d 438, 442–43 (2d Cir. 1966). It may be possible to read that opinion (at 443) as declaring that whenever there has been an "exclusion of willing candidates from the ballots", this is sufficient without more to compel a finding that the exclusion "may have affected the outcome". In an earlier decision by a District Court, such seems to have been assumed. *Wirtz* v. *Local Unions No. 406, etc.*, 254 F. Supp. 962, 966–67 (E.D. La. 1966). Our Court of Appeals stated in its opinion, however, that the Secretary must show a "reasonable probability" that the election may have been affected and that there is a "meaningful relation" between the violation and the election outcome. It seems, therefore, that a violation by disqualification of candidates does not automatically require a finding that the outcome may have been affected.

Two elections were before our Court of Appeals, each in a different local union. Prior to one election, eleven opposition candidates were disqualified, after this, the election was uncontested, 216 members then voting out of a total of almost 600 members. One of the disqualified candidates is referred to by the Court

of Appeals as a "proven vote-getter" who had won in an earlier election. In the other election, two opposition candidates were disqualified; after this, the election was uncontested, 607 members then voting out of a total of 3,000 members.

By contrast, while the violation in the case at bar caused the disqualification of nine candidates, there was nevertheless a contested election. In this contested election, there was an opposing candidate for the highest union office (President) and an opposing candidate for General Organizer, the second or third most important office in the union. There were eight opposing candidates for Convention Delegate, running in all districts, and three opposing candidates for district offices. Two of the candidates disqualified for general offices (only one of whom was disqualified for lack of prior office experience) were ruled eligible to run, and did run, in all districts for Convention Delegate. The opposing candidates established a campaign headquarters and conducted an apparently vigorous campaign, with distribution of leaflets and weekly caucuses and election forums. There is nothing to show that any disqualified candidate was a "proven vote-getter" because none of those disqualified had ever run for any office or for the Assembly. In the contested election of 1965, there were 11,254 votes cast out of a total membership of 27,354; this is to be compared with the vote in the last uncontested election of 1962 when 7,131 votes were cast out of a total membership of 26,340.

Consideration has been given not merely to the effect of the by-law on those disqualified but to its possible effect in discouraging others from coming forward as opposing candidates. Nonetheless the heavy vote in favor of the administration candidates is convincing that the existence and enforcement of the by-

law could not have affected the outcome of the election.

The evidence satisfies me that the primary reason for the heavy vote in favor of the administration was the lack of any real grievance or issue against the union management. The platform of the opposition Membership Party did not charge any abuses or misconduct or even any inefficiency; there was no attempt to state any specific complaints; there was no dramatic or important issue to rouse the membership against the incumbents. The appeal of the opposition was in substance that it could do the same job better.

The evidence also shows an important further reason for the election outcome. The administration ran candidates for all 372 places as delegates to the Assembly; against them were only 5 opposing candidates and of these only 2 were of the Membership Party. The history of earlier elections shows that when there are only a few candidates opposing a full slate for the Assembly, the opposing candidates are never elected. There is no suggestion that the qualification for Assembly candidacy (one year's membership) was unreasonable. Any substantial rank and file dissatisfaction would have produced many more opposing candidates for the Assembly than the 5 who actually ran. The presence in all districts of a full slate of Assembly delegates, virtually unopposed, was itself so great an advantage to the administration as to insure the outcome. The vote of 372 Row A candidates themselves, with their fellow workers and friends in their respective shops, was a powerful factor and, taken with the ability of members to vote the only full ticket by pulling down one lever of the voting machine, must have been overwhelming.

V

The 1965 election cannot be declared void and a new election directed. However, Local 6 ought not to be left free to enforce in future elections—such as that due to be held in May 1968—a qualification which is not "reasonable". The Secretary ought not be put to the necessity of bringing a second action.

Rather than dismissing the complaint, therefore, it seems only right to enjoin Local 6 from enforcing in future elections any prior office holding qualification.

True, the Act does not expressly authorize such relief; neither does it expressly deny authority to grant it. The legislative history indicates that Congress never considered the situation here presented; thus there is no legislative history relevant to the question of granting the suggested relief.

In the *Local Unions 410, etc.* opinion, our Court of Appeals said (366 F. 2d at 442):

> "And because Title IV does not permit the Secretary to seek either to enjoin future elections, or to declare a given candidacy requirement unlawful absent a valid complaint and an investigation of its application to a specific election, cf. *Calhoon* v. *Harvey, supra*, we conclude that we have no power to afford the Secretary relief and therefore that these cases are moot."

But the situation there was that a new election had *already* taken place when the Court of Appeals spoke; action had already become moot. In the case at bar, the officers still hold office under the 1965 election against which the action was directed. The action here is not moot. Moreover, unlike *Calhoun* v. *Harvey,* 379 U.S. 134 (1964), the Secretary (not individual members) is properly before this Court.

If the 1965 election cannot be declared void under the Act, despite a violation, why should not the Secretary at least be given relief against a similar violation in the future? This would seem entirely consistent with the purposes and objects of the Act. The Secretary in his complaint prays in traditional form for "such other relief as may be appropriate".

Congress by the Act has given jurisdiction to this Court as a court of equity. Such jurisdiction means that the Court can grant whatever relief is appropriate to the purposes and objects of the Act, whether expressly authorized in the Act or not. *United States* v. *Republic Steel Corp.*, 362 U.S. 482, 492 (1960); *Mitchell* v. *DeMario Jewelry, Inc.*, 361 U.S. 288, 290–92 (1960); *Porter* v. *Warner Co.*, 328 U.S. 395, 397–98 (1946). Citing these decisions, a commentator has suggested with reference to the Act:

> "The fact that one type of equitable enforcement remedy may have been expressly provided by Congress in a regulatory statute should not be a bar to a court's utilization of additional equitable remedies which will achieve the legislative purpose." Beaird, Union Officer Election Provisions of the Labor-Management Reporting and Disclosure Act of 1959, 51 Va. L. Rev. 1306, 1338 (1965).

Our Court of Appeals, citing with approval the Beaird article at the pages from which the above quotation is taken, appears to have concluded that appropriate equitable relief may be given in this type of action even if not expressly authorized in the act. *Wirtz* v. *Local Unions 545, etc.*, 366 F. 2d 435, 436 (2d Cir. 1966).

The change made by Local 6 in its by-laws after the action was commenced is not sufficient to comply

with the Act. The qualification by-law in effect at the May 1965 election required prior office holding and two years' membership in good standing. That by-law as later amended now requires prior office holding *or* membership in good standing for *five* years. Thus the amended prior office holding qualification has the effect of discriminating against those who have been members for two years but have not held prior office. In a union with a large turnover and the regular entry of numerous new members, the amended qualification by-law is not "reasonable" under the Act. The Secretary is entitled to an injunction against the enforcement in any future election in Local 6 of any by-law requiring prior office holding as a qualification for office.

The foregoing contains the findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a).

A judgment in accordance with the opinion may be submitted on notice.

Dated: New York, New York, March 20, 1967.

INZER B. WYATT,
United States District Judge.

APPENDIX F

United States District Court for the Southern District of New York

66 Civ. 626

W. WILLARD WIRTZ, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

v.

HOTEL, MOTEL AND CLUB EMPLOYEES UNION, LOCAL 6, DEFENDANT

JUDGMENT AND PERMANENT INJUNCTION

This action having come for trial on January 16, 17, 18 and 19, 1967, before the Court, Honorable Inzer B. Wyatt, District Judge, presiding, and the issues having been duly tried, and a decision containing findings of fact and conclusions of law having been duly rendered and filed on March 20, 1967, it is

ORDERED, ADJUDGED AND DECREED as follows:

(1) The prior office holding qualification contained in Article IV, Section 7(a)(2) of defendant's By-Laws is not a "reasonable qualification" upon its members' right to nominate candidates for elective office within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, Section 401(e), 29 U.S.C. 481(e), and its enforcement in the election of May 19, 1965 was a violation of the Act.

(2) the aforesaid violation of the Act was not one which "may have affected the outcome" of the 1965 election within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, Section 402(c), 29 U.S.C. 482(c).

(3) The defendant, its officers, agents, servants, employees, and representatives, and all those persons in active concert or participation with them, be, and they hereby are, permanently enjoined and restrained from enforcing in any future election of defendant, any by-law requiring prior office holding as a qualification for office.

(4) The jurisdiction of this Court is retained for the purpose of enforcing or modifying this permanent injunction and for the purpose of granting such additional relief as may hereafter seem appropriate.

Dated: New York, New York, March 29, 1967.

INZER B. WYATT,
United States District Judge.

Judgment entered March 29, 1967.

JOHN J. OLEAR, JR.,
Clerk.

APPENDIX G

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U.S.C. 401, *et seq.*) provides in pertinent part:

> Sec. 2. [29 U.S.C. 401] (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-relations.
>
> (b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor orga-

nizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

Sec. 401. [29 U.S.C. 481] (a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any

bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by la-

bor organization officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title. The officials desig-

nated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).

Sec. 402 [29 U.S.C. 482] (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies

without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the

constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgement in a civil action, but an order directing an election shall not be stayed pending appeal.

Sec. 403. [29 U.S.C. 483] No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this title. The remedy provided by this title for challenging an election already conducted shall be exclusive.

Sec. 601. [29 U.S.C. 521] (a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may

deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

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